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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The

SUPREME COURT OF THE UNITED STATES

JEANNE BROWN and MASON BROWN,

Petitioners,

v.

PREMIERE DESIGNS, INC.

Respondent.

On Petition For Writ Of Certiorari
To The GEORGIA COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

JEANNE BROWN
MASON BROWN
5915 Mallory Road
College Park, GA 30349
404-668-0663
PETITIONERS

QUESTIONS PRESENTED FOR REVIEW

Does the standard for determining whether Civil Rights discrimination and the denial of rights of Minority Homeowners under the Georgia Arbitration Code, OCGA 9-9-8 (b) and Federal Arbitration Act, 9 USC 1 et seq. by the denying of numerous objections during arbitration resulting in urgent medical care as employed by Georgia courts with the cloak of an applied absence of record or transcript has a constitutionally improper purpose Placing a substantial obstacle in the path of a woman and minority homeowners in Georgia seeking to be treated fairly in judicial proceedings, trial by jury and allowed to be heard by exercising fundamental rights under the Constitution, 1964 Civil Rights Act and this Court?

Does the Constitution allow Contractors and Banks to maintain documented evidence of conspiring, fraudulent and felonious activities to defraud Women and Minority homeowners in Georgia, evasion of the Corrupt Motive Doctrine to acquire a Judgment void on its face immersed in absurdity demonstrating the egregious abuse of judicial discretion in violation and manipulation of Judicandum Est Legibus, Non Exemplis?

Whether there was sufficient evidence in the award and judgment to establish the egregious mis-representations and false statements of the arbitrator conflicting with the fundamental rights under the Constitution, Civil rights Act and this Court by the arbitrators discriminatory denial of evidence on behalf of the contractor and the bank denying the Browns July 12, 2000 executed Right to Cancel under the Truth in Lending Act, Regulation Z.

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OPINION BELOW

The opinion of the Georgia Court of Appeals is reported at Brown v. Premiere Designs, Inc.___GA App___, 2004 wl (Case number A04A0296, March 23, 2004).

JURISDICTION

The Gwinnett County State Court's judgment was entered on March 7, 2003. The Georgia Court of Appeals was entered on May 10, 2004, and a timely motion for reconsideration was denied on April 9, 2004. This Court has jurisdiction under 28 USC s 1257.

The appropriate notifications were made under 28 USC s 2403.

STATUTORY AND CONSTITIONAL PROVISIONS

Amendment XIV, United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Georgia Code Ann, OCGA 9-9-8 (b).

The parties are entitled to be heard; to present pleadings, documents, testimony, and other matters; and to cross-examine witnesses. The arbitrators may hear and determine the controversy upon the pleadings, documents, testimony, and other matters produced notwithstanding the failure of a party duly notified to appear.

United States Truth in Lending Act, Regulation Z and Consumer Protection Laws

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STATEMENT OF FACTS

In May 2000, Jeanne and Mason Brown entered into a contract for home improvement with Premiere Designs, Inc. On July 12, 2000 the Brown's properly executed its Right to Cancel and delivered the written notice to Premiere Designs representative Martha Lococo at the Brown's residence on July 12, 2000. Ms. Lococo refused Mr. Brown a copy of disclosures and the executed Right to Cancel, however Mr. Brown prior to delivery of documents to Ms. Lococo made a copy of the executed documents to Ms. Lococo disappointment. Evidence clearly illustrates by events and Chevy Chase Bank, FSB Pre-Funding Document Review Form documents the communications between the bank and Premiere Designs collaborative efforts of conspiracy to illegally continue the cancelled transaction on July 18, 2000 six days after the Brown's executed July 12, 2000 cancellation under the Truth in Lending Act, Regulation Z, Georgia Lending Laws and Federal Consumer Protection Laws. Evidence clearly illustrates that Chevy Chase and Premiere devised a method to illegal create 1999 W-2's in Mrs. Brown

name, illegally back date Federal documents including but not limited to the Department of Housing and Urban Development, recreate the July 12, 2000 Right to Cancel with a removal of Mrs. Brown's signature executing the cancellation of the transaction, diversion of the illegal mailing of unauthorized checks totaling over $30,000.00 by theft of Mrs. Brown identity by Premiere Designs, Inc. with the continued loan transaction and receipt of checks through the US Postal Service a small example of the numerous Felonious activities that Michael Kosterlitz, President of Premiere Designs, Inc. has engaged in with uncanny expertise, attached as Exhibits A". Michael Kosterlitz later returned two of the pilfered checks to Chevy Chase Bank and made numerous threats against the Brown's property and lives, thusly the Brown's alerted the authorities which directed the Brown's to notify Michael Kosterlitz and his associates that their actions were being reported to multiple agencies thatif anything happened to the Brown's that Mr. Kosterlitz and associates were to be the prime suspects. Mr. Kosterlitz swore out a false criminal warrant against the Brown's for the amount of the two checks he pilfered totaling $17,904.00. Each indisputable item of evidence was denied admittance into evidence by Steven Gold during arbitration despite the Brown's numerous objections during the arbitration as Mr. Gold ordered that the Brown's were not allowed to make any further objections in the hearing as Mr. Gold insisted he was the judge and jury and only allowed Richard Witterman and Michael Kosterlitz to speak and admit evidence during the arbitration hearing in violation of OCGA 9-9-8 (b). Mr. Kosterlitz with Mr. Witterman during arbitration referred to in Mr. Gold's presence to the Brown's as "NIGGERS" with such frequency that Mrs. Brown had to be rushed to hospital during

the 1/23/03 arbitration hearing 12 minutes before midnight.

The Brown's filed an appeal due to the discrimination against the Brown's and the denial by the arbitrator of the Brown's rights to be heard during the hearing as provided by OCGA 9-9-8 (b) in contrast to alleged reasons presented by the Georgia Court of Appeals. Steven Gold denied the Brown's rights and made numerous fraudulent misrepresentations against the Brown's in his February 19, 2003 award against the Brown's in violation of Federal and State Law.

REASONS FOR GRANTING THE WRIT

The Georgia Arbitration Code, OCGA 9-9-8(b) specifically address the rights of the participants in that the parties are entitled to be heard; to present pleadings, documents, testimony, and other matters; and to cross-examine witnesses. The arbitrators may hear and determine the controversy upon pleadings, documents, testimony and other matters produced notwithstanding the failure of a party duly notified to appear. The State Court of Gwinnett County held that the Petitioners due solely to their race and minority homeowners status their entitled rights as prescribed by the *Georgia Arbitration Act, OCGA* 9-9-8 b)would not be allowed and does not apply thus the Petitioners were not allowed to be heard; present pleadings, documents, testimony and other matters; and to cross-examine witnesses during the arbitration hearing. The State Court of Gwinnett County specifically held that the arbitration hearing denial of the Petitioners Rights and Motions for fair legal proceedings are the sole discretion of the Gwinnett County Courts thus the denial of Petitioners Rights and Motions in violation of the Constitution and Petitioners Civil

Rights, *Baker v. California Land Title Co. DC Cal.* 349 F. Supp. 235, 238, 239 is clear discrimination against the Petitioners in Gwinnett County Courts. The OCGA s 14 Contracts enacted by the Georgia General Assembly state that An act and a neglect may be both a breach of contract and a tort, *Lamb v. McHan,* 6 Ga. App. 5, 64 S. E. 316 (1909). It is the law of Georgia that all cases, he who maliciously procures an injury to be done to another, whether it is an actionable wrong or a breach of contract, is a joint wrongdoer and may be sued, either alone or jointly with the actor, *OCGA* s 51-12-30 (GCA s 105-1207), *Fort & Turner Enterprises, Inc. v. Scrocca,* 195 GA App. 554, 394 S. E. 2d 364 (1990), *Rome Industries, Inc. v. Jonsson*, 202 Ga. App. 682, 415 S. E. 2d 651 (1992). As will be shown, the standard of denial of Petitioner rights to be heard; present pleadings and documents during arbitration as prescribed by the Georgia Arbitration Code including but not limited to the OCGA 9-9-8(b) adopted by the State Court of Gwinnett County in applying both the purpose and effects prong the substantial racial discrimination against the Petitioners in awarding a most egregious and fraudulent judgment that conflicts with the US Constitution and numerous decisions of this Court.

I. The Standard Employed by the State Court of Gwinnett County to Deny the Brown's right to a fair trial and fair arbitration hearing based on the Brown's racial and minority homeowner status has a Constitutionally Improper purpose and effects which conflicts with the US Constitution and numerous decisions of this Court outlawing of Racial Discrimination and violation of Rights of a State resident; Civil Rights, Constitutional and Judicial

rights under Georgia Law and the US Constitution

The US Constitution has outlawed the unfair treatment or denial of normal privileges to persons because of their race, age, sex, nationality or religion, *Baker v. California Land Title Co.,* DC Cal. 349 F. Supp. 235, 238, 239. *The Georgia Arbitration Act, OCGA* 9-9-8 (b) applied to the Brown's as they were denied their rights as a party entitled to be heard; to present pleadings, documents, testimony and other matters; and to cross-examine witnesses. The arbitrator did not hear and determine the controversy upon the pleadings, documents testimony, and other matters produced and awarded a fraudulent judgment void on its face as the arbitrators judgment void on it's face when its validity is apparent upon inspection of judgment roll, *Application of Behymer* 130 Cal. App. 200, 19 P.2d 829,830.

In short, the State Court of Gwinnett County held that its Discretion and Application of Discrimination against the Brown's and Denial of a fair arbitration based on the Brown's race was arguably proper in Georgia, which is tantamount to Abuse of Discretion, *Manekas v. Allied Discount Co.*, 6 Misc. 2d 1079, 166 NY. S.2d 366, 369 which requires a decision by this Court as to whether the Racial Discrimination against the Brown and the denial of the Brown's rights to be heard; to present pleadings, documents, testimony and other matters are standard under the US Constitution and this Court.

This Court should decide what the correct standard is under the US Constitution in reference to the Racial Discrimination against the Brown's by the State Court of Gwinnett County Denial of a fair legal proceeding

and arbitration. The scope of the inquiry into what Civil Rights may be denied by Georgia Courts based on the Race of specific parties whether the Denial of their rights are at the Discretion of Georgia Court Judges and arbitrators to Deny the parties State and Constitutional Rights in the United States of America.

The Constitution has provided for each citizen of each State the right to all Privileges and Immunities of Citizens of the several States a fair Judicial Proceeding, trial by jury and that the persons not receive unfair treatment or denial of normal privileges to person's because of their race, age, sex, nationality or religion, *Baker v. California Land title Co. DC Cal.* 349 F. Supp. 235, 238, 239. The State Court of Gwinnett County violated the *Federal Arbitration Act* 9 USC 1 et seq. on multiple issues including but not limited to the denying of the Petitioner objections to and during the hearing and refused any admission of evidence by the Petitioners in violation of *OCGA* 9-9-13, 9-9-1 with the corruption of the Arbitration hearing the award and judgment must be impeached for fraudulent concealment by the Arbitrator and Respondent, *Hardin v. Brown,* 1859, 27 Ga. 314 arbitration 63.3. The Arbitrator makes several fraudulent references to fictitious claims that the Petitioners did not cancel the transaction within the three-day recission period which is a direct contradiction of the truth as indicated by the executed July 12, 2000 executed Right to Cancel, Chevy Chase Bank Pre-Funding Document Review Sheet, Chevy Chase Bank Universal Data Form, Department of Housing and Urban Development and Office of Thrift Supervision attached as "Exhibit A".

II. The Standard Employed by the State Court of Gwinnett County to Deny the Brown's

right to a fair trial and fair arbitration hearing based on the Brown's Racial and minority homeowner status and Racial Discrimination has a Constitutionally Improper Purpose and Conflicts With and Undermines the Decisions of This Court.

The Standard adopted by the State Court of Gwinnett County to Deny the Petitioners rights to a fair trial and fair arbitration hearing based on the Petitioner's Racial and Minority homeowner status and Racial Discrimination is an outlawed standard and a standard that violates numerous laws and Civil Rights and is inconsistent with the holdings of this Court. The State Court of Gwinnett County Abuse of Discretion by applications of Discrimination against the Petitioners and Denial of the Brown's Georgia Arbitration Code, OCGA 9-9-8 (b) rights to be heard conflicts with and undermines the holdings of this Court.

As the State Court of Gwinnett County employed its Abuse of Discretion to discriminate against the Petitioners the arbitrator engaged in fraudulent acts in collaboration with the respondent by falsely manipulating the record of the hearing and award claiming misrepresentations and suppressions of criminal acts of the Contractor and the bank against the Brown's as details of the fraudulent award. The State Court of Gwinnett County employed the standard of the Respondent by the collaboration of Fraudulent misrepresentation, fraudulent Acts, and Fraudulent Intent, *Cormack v. American Underwriters Corp., 288 NW 2d 634, Hartford Acc. & Indem. Co. v. Singer*, 185 Va. 620, 39 S.E. 2d 505, 507, 508, *Orenduff, DC. Okl.*, 226 F. Supp. 312, 314. The misrepresentation of the Respondent and State

Court of Gwinnett County are Elements of a cause of action for fraud, false representation of a present or past fact is fraud, *Citizens Standard Life Ins. Co. v. Gulley, Tex. Civ. App., 521 S.W. 2d 354, 356.* The actions and standards employed by the Georgia Courts and the Respondent possessa Constitutionally Improper purpose thatConflicts with and Undermines the Decisions of this Court. The arbitrator misrepresented the facts of the case including but not limited to denying the admission of documented evidence of the Brown's July 12, 2000 executed Right to Cancel, the Respondents illegal negotiation of checks, the documents illustrating the conspiracy between the Respondent and the Bank to illegal continue on July 18, 2000 the Brown's cancelled transaction in violation of the Truth in Lending Act, Regulation Z and Federal Consumer Protection Laws, the nearly $3,000 of labor and $68,500 in damages to Petitioners property by the Respondent; the Respondents Breaching of Contract by the Respondent by failing to obtain a permit as agreed, served a Cease and Desist Order by the Georgia Secretary of State for performing illegal work without a license, failing all County and Engineer Inspections, filing a fraudulent warrant application as well as the Respondents collaboration of committing Identity Theft against the Petitioners all of which were inappropriately concealed by the arbitrator and misrepresented on the record in the details of the award by the State Court of Gwinnett County standard of Abuse of Discretion employed to discriminate against the Petitioners in Georgia in conflict with this Court.

III. There was Sufficient Evidence for the State Court of Gwinnett County to Establish that the Standard Employed to Discriminate

against the Petitioners by the Denial of the Brown's Right to be heard; to present pleadings, documents, testimony and other matters has the Effect of Placing a Substantial Obstacle in the Path of a Woman and Minority Homeowner Seeking a fair trial, legal proceedings, fair arbitration hearing and Fair Judgment in Georgia.

Recognizing that the Denial of the Brown's Rights under the Georgia Arbitration Act OCGA 9-9-8 (b) creates a safe harbor for Influential Contractors and Banks who offer misrepresentations and withhold information which could be used to influence whether or not a Woman or Minority Homeowner is to be Discriminated against so as to have a Judgment awarded by the State Court of Gwinnett County without sufficient competent evidence, the Georgia Court of Appeals noted a secondary example that failure to maintain a transcript warranted an Affirmed Opinion. The Georgia Court of Appeals failed to apply the aspects of the Georgia Arbitration Act OCGA 9-9-8 (b) Despite the filing of the Brown's Brief.

There was sufficient evidence that the Civil Rights Act of 1964 was not appropriately calculated in the decision to Deny the Brown's of their Fundamental rights to be treated fairly in Georgia Judicial Proceedings and therefore had an improper effect. The Rights entitled by the OCGA 9-9-8 (b) Georgia Arbitration Act that were encouraged to be withheld by the State Court of Gwinnett County substantially obstructs a woman and minority Homeowners Rights to a fair judicial proceeding in Georgia.

The State Court of Gwinnett County and the Georgia Court of Appeals refused to recognize that this failure to allow the Brown's under the Georgia Arbitration Act, OCGA 9-9-8 (b) and US Constitution had an improper effect and burdens a woman and Minority Homeowners to a fair judicial proceeding and arbitration. Rather, the State Court of Gwinnett County and Georgia Court of Appeals held that the Denial of the Brown's rights under OCGA 9-9-8 (b) was at the Discretion of the Georgia Courts upon woman and minority homeowners. Such an interpretation does not comply with this Courts decision under the Constitution. Thus, the Court should grant certiorari and correct the State Court of Gwinnett County by deciding whether the State Court of Gwinnett County properly Discriminated Against and Denied the Brown's rights under OCGA 9-9-8 (b) based on their race placing a substantial obstacle in the path of receiving a fair arbitration and judicial proceeding.

CONCLUSION

A writ of certiorari should be granted.

This 14th day of December 2004.

Respectfully submitted

Jeanne and Mason Brown
Petitioners

5915 Mallory Road
College Park, Georgia 30349
404-668-0663

SUPREME COURT OF GEORGIA

Case No. S04C1317
Atlanta, September 27, 2004

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

Jeanne Brown, Mason Brown et al. v. PREMEIRE DESIGNS, Inc.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF GEORGIA

Clerk's Office, Atlanta

Sherie M. Welch, Clerk

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE
ATLANTA

DATE: September 07, 2004

Jeanne and Mason Brown
5915 Mallory Road
College Park GA 30349

Case No. S04C1317
Jeanne and Mason Brown et al. v. Premiere Designs, Inc.

COURT OF APPEALS CASE NO. A04A0296

The Supreme Court today denied the petition for certiorari in this case.

All Justices concur.

Sherie M. Welch, Clerk

SECOND DIVISION
SMITH, C. J.,
JOHNSON, P. J., PHIPPS, J.

March 3, 2004

In the Court of Appeals of Georgia

A04A0296. BROWN et al. v. PREMIERE DESIGNS, INC. PH-013

SECOND DIVISION
SMITH, C. J.,
JOHNSON, P. J., PHIPPS, J.

March 10, 2004

In the Court of Appeals of Georgia

A04A0296. BROWN et al. v. PREMIERE DESIGNS, INC. PH-013

PHIPPS, Judge.

This is an appeal from an order of the State Court of Gwinnett County denying a motion to vacate an arbitration award entered in a proceeding conducted under the Georgia Arbitration Code (GAC). 1 The appealing parties complain of the arbitrator's failure to maintain a record of the arbitration hearing. Because the record shows that any omission in this regard was waived, we affirm.

Mason and Jeanne Brown brought an action for breach of contract against their home-remodeling contractor, Premiere Designs, Inc., in July 2001. Premiere answered and asserted numerous defenses as well as a counterclaim. Premiere later filed a

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1 OCGA 9-9-1 et seq.

motion to compel arbitration. The trial court granted the motion by order directing the parties to choose an arbitrator or panel of arbitrators to conduct an arbitration hearing pursuant to the GAC and the Federal Arbitration Act. Arbitration resulted in a $15,101.00 award to Premiere. The Browns, who had previously been represented by counsel, filed pro se application seeking, in essence, to vacate the award. Instead, the court entered a judgment confirming it in March 2003. The Browns have filed this pro se

appeal, complaining of the arbitrator's failure to maintain a record of the proceeding and of various errors committed by the arbitrator incident and at the hearing. OCGA 9-9-8 (e) provides: "The arbitrators shall maintain a record of all pleadings, documents, testimony and other matters introduced at the hearing. The arbitrators or any party may have the proceedings transcribed by a court reporter." Generally, under OCGA 9-9-8 (f), a requirement of the Code

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See OCGA 9-9-6 (a)
9 USC 1 et seq.
See OCGA 9-9-13.
See OCGA 9-9-15.

Section "may be waived by written consent of the parties or by continuing with the arbitration without objection." At the time this action was brought, the GAC at OCGA 9-9-13 (b) Set []forth four statutory grounds for vacating an arbitration award upon the application shall be vacated if the court finds that the rights of the applying party were prejudiced by: (1) Corruption, fraud, or misconduct in procuring the award; (2) Partiality of an arbitrator appointed as a neutral; (3) An overstepping by the arbitrators of their authority or such imperfect execution of it that a final and definite award upon the subject matter submitted was not made; or (4) A failure to follow the procedure of th[e] (Code), unless the party applying to vacate the award continued with the arbitration with notice of this failure and without objection. The arbitration award shows that prior to the arbitration hearing, both sides waived the requirement under OCGA 9-9-8 (e) that the arbitrator preserve a record of the arbitration proceedings; and that they continued with the arbitration without objection, thereby effectively waiving OCGA 9-9-8 (f)'s requirement that the

arbitrator maintain a record of the proceeding, Consequently, under OCGA 9-9-13

Greene v. Hundley, 226 Ga. 592, 594 (1) (468 SE2d350)(1996).In 2003, the General Assembly amended the GAC to add a fifth ground: "The arbitrator's manifest disregard of the law." OCGA 9-9-13 (b)(5). The 2003 amendment is applicable to all civil actions filed on or after July 1, 2003. See Ga. L. 2003, p. 820, 9/ The amendment is thus inapplicable here.

(b) (4), the court properly ruled that the arbitration award is not subject to being vacated based on the arbitrator's failure to record the proceeding. Premiere has moved to dismiss this appeal because of the absence of a transcript of the arbitration hearing. The absence of a transcript is a ground for affirmance of the judgment rather than dismissal of the appeal. Here, the absence of a record or transcript precludes review of the Browns' claims of error committed by the arbitrator, thereby necessitating an affirmance of the superior court's refusal to vacate the arbitration award on any of these grounds. But Premiere's motion to dismiss this appeal is denied.

Judgment affirmed. Smith, C.J., and Johnson, P.J., concur

Supra

See, e.g., Pritchett v. Merritt, 263 Ga. App. 252, 254 (2) (587 SE2d 324)(2003) (judgment affirmed based on absence of transcript in record); Leitzke v. Leittzke, 239 Ga. 17 (235 SE2d 500) (1977) (judgment affirmed where no authorized means were used to bring evidence to appellate court on appeal);

Frank v. State of Georgia, 257 Ga. App. 164 (1) (570 SE2d 613)(2002)(this court's decision must be made on record and not upon briefs of counsel).

IN THE STATE COURT OF GWINNETT
STATE OF GEORGIA

JEANNE BROWN and
MASON BROWN
Plaintiffs,

CIVIL ACTION

File No. 01C-4735-1

Vs.

PREMIER DESIGNS,
Defendants

FINAL JUDGEMENT

The Court having received the Binding Arbitration Award issued February 19, 2003, in the above-styled case, the Court finds that the award of the Arbitrator is accepted and made a judgement of this Court as follows:

Judgement shall be in favor of the Defendant/Counterclaim Plaintiff Premiere Designs, Inc. and against Plaintiffs/Counterclaim Defendants Jeanne and Mason Brown, jointly and severally, in the sum of $15,101.00, and no pre-judgment interest shall be awarded Defendant/Counterclaim Plaintiff. Neither party is entitled to attorney's fees and expenses or costs. Defendant/Counterclaim Plaintiff shall be entitled to post judgment as permitted by law. The Court expressly directs the Clerk of Court to

enter said judgment in the records of the Court immediately and the Court expressly determines that there is no just reason for delay.

So Ordered this 7th day of March 2003.

Hon. Robert Mock, Judge
State Court of Fulton County

IN THE OFFIE OF DISPUTE RESOLUTION OF
GWINNETT COUNTY
STATE COURT OF GEORGIA

Jeanne Brown and
Mason Brown

Plaintiffs

Civil Action No. 01-C-4735-1

v.

Premiere Design, Inc.

Defendant

BINDING ARBITRATION AWARD

Having been designated as Arbitrator in this case and having conducted a hearing in this matter on 01/23/03 and 02/05/03, I hereby issue the following award:

For the Defendant, against the Plaintiffs jointly an severally, in the amount of $15,101.00, with no pre-judgment interest. Each side to pay its own costs. This is the net result of all claims, counter-claims, and set-offs. See attached for details.

I certify that a copy of this Award is being provided to all parties and the original to the office of Dispute Resolution. This 19th day of February 2003.

_____

Steven J. Gold
Arbitrator's Signature
Print Arbitrator's Name

IN THE OFFIE OF DISPUTE RESOLUTION FO
GWINNETT COUNTY
STATE COURT OF GEORGIA

Jeanne Brown and
Mason Brown

Plaintiffs

Civil Action No. 01-C-4735-1

v.

Premiere Design, Inc.

Defendant

BINDING ARBITRATION AWARD

Pursuant to an ORDER OF BINDING ARBITRATION issued by the court on December 6th 2002, the parties elected to conduct the arbitration hearing through Gwinnett County Office of Dispute Resolution and choose the undersigned as the sole arbitrator to hear this matter. After two pre-hearing pone conferences to address various pre-hearing matters and to issue various pre-hearing rulings, a first session was conducted on 01/23/03 commencing at 9AM and recessing at 11PM. A second session

was conducted on 02/05/03, which commenced at 9:15 AM and which session and hearing concluded at 4:15 PM. During the course of the two days of hearing, there was testimony by seven people and admission into evidence of sixty exhibits, and video evidence was viewed. Attached to the original of this Award being sent to the Office of Dispute Resolution are copies of the two letter rulings provided to the parties documenting the pre-hearing rulings that were made.

It needs to be noted that Plaintiff filed an Amendment to Complaint on November 19, 2002, including adding a party defendant, Michael L. Kosterlitz, in his individual capacity. The parties have stipulated that the Court reserved ruling on allowing this party to be added, pending the outcome of this arbitration, and the Order of Binding Arbitration does not include this party defendant. For the foregoing reasons, this Award does not include consideration of any claims against the defendant. Furthermore, Plaintiffs claimed inclosing argument that defendant failed to answer Plaintiff Amendment to Complaint, and that by virtue of this failure to answer, defendant is in full default as to the Amendment, and all of the allegations in the Amendment should be deemed admitted as matter of law. In response to this argument, I have applied the general rule that amended complaints not answered are deemed denied, and furthermore, the Order of Binding Arbitration signed on December 6, 2002 stayed all further Court proceedings, precluding and requirement for defendant to file an answer to the Amendment to complaint.

Prior to the commencement of the hearing both parties waived their right to preserve a record of the proceedings.

This written discussion is not intended to be exhaustive findings of fact and conclusions of law of every factual and legal issue presented. However, due to the numerous matters raised and the binding nature of the award, as felt it appropriate to provide the parties with some discussion as to what I considered to be major operative facts, issues and conclusions upon which this award was based. I assure the parties that I have given careful consideration to all of the facts, issues and damages requests presented in coming to my award, whether or not they are fully articulated herein.

Background

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This dispute arose out of a contract for various home improvements entered into between the two named plaintiffs ("the Browns") and the corporate defendant ("Premiere"), based upon a written "Agreement" executed by the parties dated May 12, 2000. (The two named plaintiffs are husband and wife. Due to uncertainty and confusion even among the two plaintiffs as to which one of them performed various actions or omissions, the parties stipulated that the two plaintiffs acted in concert concerning all relevant matters, and that any award for or against them would be issued jointly an severally. I will therefore not refer to them individually, but only jointly as either "the plaintiffs" of "the Browns".)

There were three major components to this agreement by which Premiere was to provide to the Browns home improvements: 1) in a portion of the Brown's unfinished basement, build a finished portion consisting of two rooms and a bathroom; 2) erect a sunroom addition to adjoin the back of the existing house, including a spa/hot tub; 3) erect an outdoor deck to adjoin the new sunroom addition. The total amount agreed upon for this entire project was $29,840.00. Through documents dated July 12, 00, the Browns executed a "home improvement Retail installment contract Georgia" with Premiere as the seller, which Premiere assigned to Chevy Chase Bank, FSB("Chevy Chase"), a deed to secure debt with Chevy Chase as the grantee/Lender recorded with the clerk of Fulton County Superior Court on August 23, 2000, a "Waver of HUD 1A Settlement Statement" executed by the Brown's for Chevy Chase Bank as the assigned lender, a "Notice of Right to Cancel", and both parties executed a "Consumer Disclosure and Authorization for stage payments". Various fees were added to the financing documents, bringing the total amount financed and assigned to Chevy Chase Bank to $30,241.00.

Premiere employed an outside contractor by the name of Allen Sharpe to perform all of the work on this job, utilizing workers and sub-contractors as he saw fit. The Browns signed a little note dated July 13, 2000, one day after execution of the above financing documents, stating, Allen Sharpe - Job completed well done Allen". The Browns testified in explanation about this note that they signed it upon Mr. Sharpe insisting, so that he could show it to Premiere and get paid for the work he had performed to date, although there was an understanding, though not noted in writing at that time, that other workers

would be sent out by Premiere to finish items yet undone or items needing corrective work. In any event, the first written evidence that the Browns had issues with insufficiency of the work performed and with items that had not yet been performed, is a letter form them addressed to Premiere dated July 24, 2000. This is significant for two reasons: first, as noted, it is the first written complaint by the Browns concerning dissatisfaction with the job; second, it occurred after the three day right to cancel contained in the Notice of Right to Cancel, and there has been no evidence exercised that right.

It is clear from the above documents that a disbursement of the financed amount was to commence at the end of the three day rescission period even if the job was not completed at that time, with the first payment of $11,936.00 to be mailed be Chevy Chase to Premiere and made payable only to Premiere, and two remaining payments of $8,952.00 each to be made payable to Premiere and the Browns, and mailed to the Browns. The Browns were to endorse and mail the remaining two checks to Premiere upon completion of specific stages of the project, and there would be a final completion form that will be signed upon completion of the project", apparently to be signed by Premiere and the Browns. There was no evidence presented about execution of any such form" other than the above referenced note to Allen Sharpe executed by the Browns.

It is clear from these documents executed on July 12, 2000, that they were affording Premiere a unilateral right to negotiate the first payment, and they were affording the Browns the opportunity to control the negotiation of the other two payments subject to their satisfaction with the progress and eventual

completion of the job. What in fact occurred was that all three checks, although properly made payable and in amounts as noted above, were all sent at the same time by Chevy Chase to Premiere, and dated August 9, 2000. Premiere received them some time shortly thereafter. It is unclear exactly when these checks were negotiated by Premiere, but the evidence established that all three were in fact deposited in Premiere's business bank account without endorsement by the Browns, most likely by the end of August, 2000. There is also evidence to conclude that Premiere deposited the two checks made out to the Browns without their endorsement after attempts to obtain their endorsement failed.

The evidence documents classic "he said, she said" and breakdown of communications issues as often arise in disputes of this nature, with both sides contending that the other was not cooperative in attempting to address or remedy the issues raised. Correspondence was exchanged, and allegations were made of lack of cooperation and communication through attempted phone communications. By September 15, 2000, the Browns had hired an attorney, as there is a letter of that date from their attorney addressed to Premiere, reiterating the existing problems and dissatisfaction of the Browns with the job. Premiere did not make a response until a month later, in a responsive letter to the Browns' attorney dated October 16, 2000, in which it disputed some of the complaints, but nevertheless offered to work with the Browns and their attorney towards a resolution, and proposed a meeting at the house to review the remaining complaints. The next written record is not until 6 weeks after Premiere's October 16 letter, and is not a further response, but rather a letter from the Browns attorney to Chevy Chase dated

November 31, 2000. The evidence established that the Browns never made any installment payments to Chevy Chase pursuant to the loan agreements, as the Browns felt the job had not been completed and there were problems with the work that had been completed, as documented by their written communications to Premiere beginning in July. As all of Chevy chase's checks had been negotiated by Premiere, Chevy Chase regarded the 'browns as being in default on the loan and started collection actions accordingly. The November 31 letter from their attorney was to notify that there was a dispute over performance of the underlying contract as explanation for the Browns not making any payment, and that Chevy chase should cease all collection activity under the circumstances. It also notified Chevy Chase that any issues it had with having made the disbursements should be addressed with Premiere and not with the Browns. It is significant to note here that Mr. Kosterlitz, Premiere's President, testified that it was his understanding that if the Browns had any issues concerning the performance by Premiere, that it would not relieve them of any obligation to make payment to Chevy Chase for payments it disbursed, as Chevy Chase stood in the position of an innocent creditor from whom the Browns had secured a loan. He characterized the financing arrangement with Chevy Chase as being the same as if the Browns had independently secured a loan or second mortgage with a lender. This is not the case from a loan reading of the loan documents. The underlying lain here was a "Home Improvement Retail Installment Contract" between the Browns and Premiere, which was immediately assigned by Premiere to Chevy chase, with concurrent documents executed by the Browns whereby they were certainly on notice of Chevy Chase's involvement, rights and interests, including a

security interest in their real estate. However, it is also clear from this document that Chevy Chase's rights as assignee were derivative of the rights of Premiere, and no greater than those rights, as there is a notice in bold print on the back of the contract under "ADDITIONAL TERMS OF THE CONTRACT": NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PRSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER". The Browns' testimony as to their understanding of their rights in relation to their obligations to Chevy Chase is more correct than Kostelritz concerning the $17,904.00 over which they were supposed to have control, and is even more correct concerning the $11,936.00 over which they did not have control, and in that they still had a right under these terms to contest that even this amount was not earned or due to Premiere, and thus they had grounds to refuse to make any payments Chevy Chase. Their attorney was basically telling Chevy Chase that Chevy Chases issue was with Premiere, and not with the Browns, and to pursue Premiere for the sums paid that they claimed were due from the Browns, and that the Browns would pursue their issues with Premiere. Alternatively, actually, Chevy Chase had the derivative right to pursue the underlying dispute on its merits with the Browns, although it had no first-hand knowledge or involvement with them about it. In any event, the evidence established that collection efforts by Chevy Chase ceased, although there is no evidence to suggest that the Deed to Secure Debt has been

extinguished. The next written documentation concerning this dispute is a letter erroneously dated January 9, 2000, which should have been 2001, as evidenced by the fax cover sheet and a reference to January 2001 in the body of the letter, from an attorney hired by Premiere addressed to the Browns attorney. It memorialized an October 31, 2000 phone conversation between the two attorneys and a promise by the Browns attorney to review matters with the Browns and get back with Premieres attorney by November 3. It further memorializes that Premieres attorney was not contacted by November 3 as promised, and a failure to respond to at least four phone messages left by Premieres attorney of the Browns attorney between November 3, 2000 and January 9, 2001. What is puzzling about this letter is that Premieres attorney is providing notice to the Browns attorney that "if payment is not made in full by Monday, January 15, 2001, Premiere Designs, Inc. will take legal action necessary to its rights and protect its interest." The reason this is puzzling is because the evidence has established that at the time, Premiere had been paid in full by the three checks it negotiated from Chevy Chase, so that the Browns did not owe Premiere anything. Also, up until this point, the dispute had been over resolution of the Browns claim for proper completion of the original job, but now, for the first time, there was a claim being made by Premiere for payment on an account which was not further identified or quantified. In light of subsequent events about to be described, it is also significant to note that although Premieres attorney stated that Premiere "will take all legal action necessary to enforce its rights and protect its interest" concerning this mysterious amount due, there is no mention that Premiere was contemplating criminal prosecution against the Browns, which might have at

least alerted the Browns attorney to make certain that some communication was made to the Browns about this and perhaps to respond to Premieres attorney. There next occurred a dramatic raising of the stakes and escalation of this dispute. The evidence supports a finding that sometime shortly prior to April 11, 2001, Premiere decided to retain the amount of the first Chevy Chase check in the amount of $11,936.00, but return to Chevy Chase the amount of the other two checks for a total of $17,904.00. This decision was made by Premiere's President Kosterlitz after recognizing and acknowledging that Premiere had obtained those funds through a series of errors, none of which were the Browns doing. First, Chevy Chase was supposed to mail those two to the Browns, but instead erroneously mailed them to Premiere. Second, Premiere should not have deposited the checks without the Browns endorsement. (There is evidence to suggest that this was mere oversight, and other evidence to suggest that this was knowingly and intentionally done. However, the issue of whether it was negligent or intentional is not dispositive of any issues decided herein). Third, Premiere's bank should not have accepted deposit of these two party checks missing a necessary endorsement. And lastly, Chevy Chase's bank should not have honored the checks without the Browns endorsement. As intimated in Premieres attorneys letter of January 9, Premiere had come to a conclusion that the Browns were not genuinely interested in resolving their allegations of incomplete and substandard work for the job, but rather were using groundless allegations as a pretext for not paying for the job that had been essentially completed except for perhaps some minor "punchlist" type of items. Premiere based this conclusion on the lack of response and lack of communication over previous months to their offers to try to remedy the

problems alleged by the Browns. So now Premiere was reframing the dispute from trying to satisfy a customer to trying to collect from a customer. Instead of pursuing this matter this matter through civil channels, on April 11, 2001, Kosterlitz, as Premieres President, swore out a criminal warrant against the Browns for theft of services in the amount of $17,904.00. Apparently, there began a lot of wrangling over pending criminal charges, and in the meantime, the Browns filed a Consumer Fraud Complaint, but apparently that was not pursued. The firm that the Browns has earlier employed on this matter then filed a civil complaint on July 6, 2001, which ultimately generated the binding arbitration order through which this matter has been arbitrated. In the meantime, while the civil case pending, there were proceedings related to the criminal case which eventually resulted in a order from the criminal court judge, who was attempting a pre-trial intervention, for an on-site inspection by all parties and their representatives of the construction project to review and record the alleged problems as an attempt to arrive upon a resolution short of a criminal trial. During this time, the Browns also filed a Bar complaint against Premieres attorney, alleging, among other things, that he was in collusion against them with their attorneys, with whom they had by this time lost faith. The Bar dismissed their complaint as being "unfounded and unjustified". They also filed a complaint with the State of Georgia Department of Banking and Finance concerning this dispute and these matters, and received a response that it does not address matters that are subject pending litigation. The criminal intervention led to a court-ordered mediation after the on-site inspection ordered by the judge had been concluded. While no evidence was heard at this arbitration hearing as to the background

discussions involved in the mediation, a settlement agreement dated September 25, 2001, executed at the conclusion of the mediation signed by all parties and their attorneys (the Browns had hired a new attorney), was admitted into evidence. This arbitration actually began with a motion by Premiere to enforce the of this mediated settlement agreement, and while I denied the motion form various reasons I enunciated at the time, I nevertheless allowed introduction of the agreement for evidentiary purposes. The Browns did not comply with the terms of the mediated agreement, and the criminal court judge was supposed to address issues concerning such lack of compliance. However, the criminal case ended up getting dismissed by another judge before enforcement of the agreement could be addressed. The language in this agreement supports a finding that the Browns acknowledged that Premiere ha returned $17,904.00 to Chevy Chase, and further acknowledged that Premiere would be owed this sum by the Browns if the contracted work and alleged defects could be remedied sufficiently for the county to issue a certificate of occupancy. With the criminal case against them still pending, and with the Browns failing to comply with the terms of the mediated settlement agreement (they testified that they executed it under duress due to threats of dire consequences made to them by their attorney), the Browns chose to further escalate matters by swearing out a criminal warrant against Mr. Kosterlitz, Premiere's President on November 14, 2001, alleging fraudulent endorsement and forgery related to the two Chevy Chase checks. They also followed this with form letters of complaint against Premiere, Premieres President, Premieres attorney, and all of their prior attorneys, mailed to the State Attorney General, the Fulton Count District Attorney, and the FBI, all dated November 19, 2001. In addition, they filed a pro se

complaint in Federal Court on January 8, 2002, against many of the same parties and containing many of the same allegations as contained in their November 19 letters. At some point, they hired their current attorney, who represented them at this arbitration hearing, and upon his advice, the y dismissed the count of their Federal lawsuit that was not otherwise dismissed by motion of one or more of the parties. Both of the pending criminal complaints were also eventually dismissed. As part of the discovery process in this civil suit proceedings, there was a second visit and inspection of the premises by all parties and selected representatives. A vide made by Plaintiffs during this inspection was shown at the hearing.

Claims and Counterclaims

With the foregoing background established, I now proceed to address the specific claims and counterclaims. Concerning Plaintiffs claims and Defendants counterclaims: During the course of the hearing, Plaintiffs dismissed their claims for libel and slander. Their case focused on a few specifics concerning alleged defective or incomplete performance by Defendant under various theories of recovery. Defendant's counterclaim focused on completion of the job. Both sides made claims for expenses, costs of litigation, punitive damages and attorney fees. 1. Main drain clog causing sewage back up through the new bathroom fixtures installed by the Defendant and damage to the basement build-out constructed by defendant. Graphic photographic evidence was presented depicting this condition and the damage it caused. The Browns testified that this problem did not develop until five or six months after Premieres work on the premises. Premiere presented

an expert witness who opined that this problem had no casual connection to the work Premiere performed. The Browns meet their burden of proof to establish any casual connections between this problem and any act or omission of Premiere. The Browns claim appears to be based on the fact that Premiere did some plumbing work on the premises and the fact this problem developed five or six months later, and therefore it must be related to Premieres activities. This mere coincidence, coupled with the amount of time that passed before the problem developed, and the expert testimony to the contrary, all lead to a conclusion that the cause of this problem was not related to any act or omission by Premiere. Furthermore, the Browns failed to provide any evidence as proof of damages even if their claim would be otherwise supported. It is particularly troublesome to me that even if the Browns rightly believed that this serious problem as presented was the responsibility of Premiere, that they have made no efforts to date to repair this problem and mitigate their damages (I do not accept Plaintiffs argument made during closing that defendant failure to raise duty to mitigate in their defensive pleadings precludes their use of this defense, because it is not an affirmative defense which is required to be pled). Premieres expert opined that repair of this problem would range from $1,000.00 to 2,500.00. The Browns are claiming that Premieres errors have rendered their house unmarketable and preclude their ability to obtain a certificate of occupancy, but this matter alone, uncorrected and unrelated to Premieres actions, will cause these problems. In any case, for the foregoing reasons, I award no damages to Plaintiffs on this claim. Furthermore, the pursuit and presentation of this groundless claim undermines the Browns credibility concerning their other claims, and

brings the validity of those other claims into question.
2. Other basement plumbing. Premiere admitted that it did not obtain a building permit for any work performed. Late in the hearing, Premiere contested that there was no evidence that the plumbing work was performed by someone unlicensed. However, I recall as trier of fact that there was a stipulation and admission earlier in the proceedings by Premiere that the plumbing work performed was not performed by a licensed plumber. Premiere did not concede that the plumbing work performed was inadequate or defective. However, Premiere presented an expert licensed plumber who opined that is would cost approximately $1,600.00 to re-do the plumbing described in the contract, including securing a permit and passing inspection. There was some evidence of a leak under the basement bathroom sink installed by Premier, but also some evidence that it had been successfully repaired by Premiere. There was also some evidence of a leak in a joint in some pre-existing overhead plumbing in the newly renovated basement area with a drop ceiling that was causing water damage to the drop ceiling tiles. The Browns claimed that this leak first appeared around the time Premiere installed the new bathroom plumbing. Obviously, all plumbing in a house is somehow interconnected, and there is a possibility that the new plumbing work may have stressed this old joint somewhere up or down the line and started this leak. There is evidence that Premiere attempted to fix of this leak which did not work, but there is also evidence that Premiere did this as a favor to the Browns and told the Browns that it did not think it was responsible for causing the leak, and that the Browns needed to employ their own plumber to fix the leak. Regardless of the causation issue concerning this matter, as with the issue of the leak

under the bathroom sink, Plaintiffs presented no evidence as proof of damages in support of their claims related to these two leaks. Conceding some possible causation established, but no proof of damages and a duty to mitigate, I am constrained to award $1.00 to the Browns in nominal damages for each of these leaks, for a total of $2.00. concerning the issue of the adequately or inadequacy of the plumbing job as a whole, again, Plaintiffs have offered none of their own evidence for proof of damages, but I award them $1,600.00 as a set-off to award to Defendant on its counterclaim, based on the testimony of Defendants expert. 3. Basement Electrical. There was confusing evidence about the basement electrical work. Premiere did perform some electrical in the basement as part of the contracted build-out, and the Browns presented some evidence of problems with the basement wiring, but there was confusion as to what problems/inadequacies pre-existed and what, if any, were caused by Premiere. I am again disturbed that the Browns have apparently done nothing all of this time to mitigate these damages, even if they believe they were caused by Premiere, especially in light of the safety hazards that they appear to pose to me as a layperson. As with the plumbing issues, Premiere did not concede that the electrical work performed was inadequate or defective. However, Premiere presented an expert licensed electrician who opined that it would cost approximately 1,200.00 to re-do the electrical work described in the contract and repair all of the electrical deficiency documented by the Browns in the basement, whether pre-existing or caused by Premiere, including securing a permit and passing inspection. This expert further opined that the deficiencies he saw were acceptable as temporary patches during the pendency of a job, but needed to

be more adequately addressed to finalize a job and bring it up to code to pass inspection. Unlike with the plumbing, which caused leaks and thus the basis for an award of nominal damages, there was no evidence that the existing electrical problems caused any kind of damage upon which to base an award for nominal damages, for once again, Plaintiffs presented no evidence as to proof of damages. As with the plumbing issues, however, I award them $1,200.00 as a set-off to the award to Defendant in its counterclaim, based upon the testimony of Defendants expert. 4. Sunroom Roof Leaks. There had been complaints by the Browns early on about leaks in the sunroom roof after the sunroom was otherwise completed. There was also evidence that Premiere attempted repairs, some of which may have been successful. The focus of the Browns' complaints at the hearing of an ongoing, sill existing, problem was in the "valley" area where the sunroom addition adjoins to the existing house, causing leaking both in the sunroom and in the ceiling of the room in the main house connected to the sunroom. The Browns presented as evidence in support of this claim a photo depicting water stains on the ceiling of the room in the house adjoining the sunroom and a photo of a spa in the sunroom with dirt and water in it, purportedly from the leak in the roof. What the Browns did not present to further prove this claim casts some doubt on it. They had access to a video recorder, as they displayed a video at the hearing. It seems to me it would have been strong, easy to construct evidence, to produce a video of a rainy day actually showing drips coming from the alleged leaks, and such evidence was conspicuous by its absence. However, in any event, the Browns again provided no evidence as proof of damages, and this time, Premiere did not assist with any evidence to support a set-off for the

Browns on Premieres counterclaim. Because of the nature of the claim of leaking water, I will again award the Browns nominal damages of $1.00 on this claim. Although I have some doubt about the ongoing, still existing problem, there was sufficient evidence to support some prior problems acknowledged by Premiere. 5. Other defective or incomplete workmanship claims. There was reference in the exhibits containing letters and communications about other claims made by the Browns at various times, but none of these other claims were presented in any detail at the hearing, and no evidence as proof of damages presented. Therefore, as to all other claims related to defective or incomplete workmanship, I award no damages to the Plaintiffs. Also, Plaintiffs raised as a big issue the fact that Defendant had not obtained the building permit as required by the contract, but Defendants experts established that this was no big deal, could always be done at a later time, and was not the cause of any real harm to Plaintiffs. 6. The gist of the Browns' overall and defense to Premieres counterclaim s that Premieres failure to adequately perform or complete the work has rendered what the Browns now have au useless and worthless. Therefore, the Browns contend that not only do they not owe any more money to Premiere on its counterclaim, but they are owe money by Premiere for its worthless work. Plaintiffs maintain that Premiere, by its own admission, has received $11,936.00 form Chevy Chase for which the Browns remain liable and for which they have overpaid. (Although the Browns testified at the hearing that they basically considered Premiers work to be worthless, in their pro se Federal lawsuit, in paragraph 22, they valued it at $3,000.00). They now contend that they have gained no benefit of the

bargain, no usefulness for any of the work performed by Premiere, and are indebted with a Security Deed in favor of Chevy Chase, which remains an encumbrance on their property. However, their own photos and video depict a sunroom addition, a deck, and a basement partially finished with two rooms and a bathroom. The Plaintiffs in their original complaint alleged a cost "in excess of $30,000.00 to put the property in the condition that it should be in had the defendant complied with the contract". In their amended complaint, Plaintiffs have failed to provide proof of damages to the real property in excess of $50,000.00". Plaintiffs have failed to provide proof of damages in support of these claims or any adequate defense to defendant's counterclaim for $17,904.00 set off by 2,800.00. Despite my clear pre-hearing rulings that no awards for equitable relief would be made, and only awards for legal monetary damages would be made, Plaintiffs at the hearing persisted in claiming that they only wanted the job done correctly, although apparently free of charge for the trouble the y had been through (this is a request for equitable relief, which basically was contained in the terms of the meditated settlement agreement, except for the terms that they would have to pay what was owed on the contract if defendant performed, which apparently was the reason for their refusal to honor the terms of the settlement) an they failed to prove legal monetary damages. 7. Concerning defendants counterclaim of r$17,904.00, the evidence supports a finding that the contracted price was 29,840.00 and that defendant first received the is entire amount form Chevy Chase, but subsequently returned $17,904.00 to Chevy Chase (a Premiere bank statement purportedly depicted this wire transfer was no admitted), not evidence that Chevy chase continues to hold Plaintiffs responsible for the full amount financed of $30,241.00 (Plaintiffs'

credit report purportedly showing this amount still due to Chevy Chase). In fact, Plaintiffs maintained throughout the proceedings, form opening argument all the way through closing argument, that they owed Defendant nothing because Defendant had already received the full amount from Chevy Chase, had not returned the anything to Chevy Chase, and Plaintiff's remained responsible to Chevy chase for the full amount. Plaintiffs urged me as the trier of fact not to accept Kosterlitz' testimony as the only proof of these matters. Fortunately, during my deliberations and review of all of the evidence, I did not have to base my conclusion only on the testimony of Kosterlitz. First, there is the mediation settlement agreement signed by Plaintiffs and their attorney acknowledging that $17,904.00 was owed to Premiere. Secondly, there is Plaintiffs own compliant, in paragraphs five and six of the original complaint, which states, "5. The original contract price was $29,840.00. 6. The Defendant was paid approximately $12,000.00 on this contract." There is no doubt that the $12,000.00 is a reference to the $11,936.00 retained by Defendant and thus there is an implicit acknowledgment in this pleading that the $17,904.00 was returned to Chevy Chase. Plaintiff's Amendment to Compliant realleges the paragraphs of the original complaint. Lastly, there is Plaintiffs pro se federal lawsuit, where in paragraph 21, they again pleaded, "The Defendant Five [Premiere] was paid approximately $12,000.00 on the contract." These factual assertions and admissions are held against Plaintiffs and establish by their own admissions and pleadings the amounts claimed by Defendant that Plaintiffs so strenuously objected to at the hearing. I would hope that Plaintiffs will be able to establish with Chevy Chase that the correct principal balance for Chevy chases claim is $11,936.00 plus the $401.00 of fees as

recited in the installment contract. Of course, Chevy Chase was not a party to this lawsuit and was not represented in any way at the arbitration. I therefore, have no authority to issue any factual findings or conclusions binding Chevy Chase, although, obviously, the combined claims of Chevy Chase and Premiere should be for no more than the total originally financed plus accrued interest and other legally allowable charges and damages flowing from those claims. I therefore find for Defendant in its counterclaim against Plaintiffs in the amount of $17,904.00 minus $2,800.00 set-off and an additional set-off of the $3.00 nominal damages awarded to Plaintiffs for a total net award to Defendants of $15,101.00. 8. Concerning what I characterize as the "escalation" level of this dispute, I find it troubling that matters escalated to the degree that they did. Premiere had adequate civil remedies and yet chose a criminal avenue that I find regrettable, and which initiated the escalation of this matter. There was nothing in Defendants attorney's January 9, 2001 letter to Plaintiffs attorney that would have put them on reasonable notice that Premieres next step was to initiate a criminal prosecution against the Plaintiffs. Premiere claims that it lost its right to file a lien against the property because it was not aware of the issues until it was too late and the 30 day period after completion in which to file a lien had already run. Premiere claims its right to pursue the Browns did not accrue until it decided to return some of the money to Chevy Chase months later. First of all, the Browns started raising issues within 30-day lien period. There is evidence that Premiere knew of these issues and the Browns refusal to endorse over the checks that had been erroneously sent by Chevy Chase to Premiere, and that Premiere decided to deposit those checks unendorsed by the Browns anyway. So premiere has

nobody to blame except itself for missing out on the 30-day lien opportunity. Additionally, even without the recourse of the lien, this was not a situation where it would necessarily be difficult to collect a civil judgment for Premiere against an insolvent Defendant, because Premiere knew the Browns were homeowners and Premiere would have the opportunity to obtain and record a FIFA for any judgment it obtained, encumbering the Browns title. But this apparently was the reason why Premiere chose the criminal avenue, to expedite its claim and assure restitution. Premieres claim was that the Browns had criminal intent not to pay for Premieres services form the very start of their transaction. I find this incredulous in light of the fact that Premiere knew that the Browns were executing a loan agreement and Security Deed encumbering their property which would not be easily released, and the fact that Premiere would have unilateral control over the first check, which it exercised, thus triggering this encumbrance and indebtedness. This to me is not evidence of criminal intent for theft of services. There did, however appear to be adequate justification for Premiere to come to the conclusion at some point that the Browns really had no interest or intent to try to resolve their issues or make payments on the loan, as Premiere and its attorney made concerted efforts in this regard with no reciprocation from the Browns or their attorney. However, once the Browns were brought to court on a criminal warrant, they responded in kind, in desperation and self-defense, although sometimes through inappropriate or misguided avenues. Premiere paints all of these efforts as a calculated intimidation campaign by the Browns, culminating in their criminal charges filed against Kosterlitz and their other unfortunate and somewhat obsessive and paranoid measures whereby

they started to see conspiracies and collusion everywhere. Thankfully, nobody was arrested, booked, fingerprinted or served any time in jail over these hijinks by both parties, but I believe they are fueling the animosity, bad feelings and claims and counterclaims for punitive oriented damages, attorney fees, expenses, etc. Concerning all such claims, I award nothing to any parties, and hold that each side pays its own costs. I do note that Premieres action of returning the $17,904.00 to Chevy Chase in effect has placed the parties in the positions they would have been in absent all of the errors concerning those two checks. 9. The total net award of this arbitration is therefore for the Defendant against Plaintiffs jointly and severally on its counterclaim in the amount of $15,101.00. Defendants request for pre-judgment interest is denied, as I find that this was an amount in genuine dispute, and thus was not liquidated, and also, even if liquidated, Defendant did not establish with specificity the date when this amount became liquidated, from which time pre-judgment interests could be calculated. Defendant for some time possessed the full amount due on the contract, and it wasn't until some later date which was not precisely established, when it decided to return some of the money to Chevy Chase, that its claim might have arguably become fixed an liquidated for interest to accrue. 10. At the hearing, Plaintiffs dismissed their claims for libel and slander. I have considered any and all other claims by Plaintiffs and Counterclaims by Defendant and find them insufficient to support any other awards.

02/19/03
DATE

_____
STEVEN J. GOLD
ARBITRATIOR

Chevy Chase Bank, FSB
Home Improvement Department

"Exh A"

Pre-Funding Document Review

TO: Premiere Designs

RE: J. Brown

Date: 7-19

Thank you for submitting the above referenced closing package.

_____ The loan package has been reviewed and no errors were found.

__X__ The loan package has been reviewed and the following error(s) were found.*

Missing/Incorrect Documents:

Original Signed Application-_____
Proof of Income- Need copy of her 1999 W-2.
Contract or Promissory Note-_____
Committment Requirements- Need proof of mtg payment. Need proof
Good Faith Estimate-_____ Title West / Banc One paid.
HUDIA-_____
HUDIA Waiver- Missing — needs to be dated 7-12-00
Servicing Disclosure-_____ to match other docs.
Work Order-_____ (see next page)
Deed of Trust-_____
Any Related Docs-_____
Insurance/Endorsement- Need HOI name, address & phone.
Flood Determination-_____
Right To Cancel-_____
Notice of Cancellation-_____
Completion Letter-_____
Stage Funding Addendum- Who signed this for you? (Toni B ? Gardner
Other-_____

The following corrections/conditions must be provided before funding the contract:

Rate Exp 8-17-00.

If you have any questions, please contact REBECCA this file reviewer at (301)280-7099, OR 1-800-713-6891 EXT. 7099
If no errors this deal will fund- today.

*-1-Check marks indicate the presence of the above item.
*-2-"X"=Incorrect endorsement, numbers and other.
*-3-No problem notations notes a correct deal, ready for funding, if the reviewers name and/or initials are present.

03-00039

U. S. Department of Housing and Urban Development
Atlanta Homeownership Center
Five Points Plaza
40 Marietta Street
Atlanta, Georgia 30303-2806
1-888-696-4687/404-331-1263
Fax 404-331-8151

"Exh A"

OCT 2 0 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Tim Pierce, Assistant Vice President/Compliance
Home Equity Division
Chevy Chase Bank
7501 Wisconsin Ave.
Bethesda, MD 20814

Dear Mr. Pierce:

Subject: Lien Removal
Mason and Jeanne Brown
5915 Mallory Rd., College Park, Georgia

Our investigation of the complaint by Mason and Jeanne Brown against Chevy Chase Bank, regarding a home improvement loan has revealed that a Chevy Chase lien remains in place against the Brown's property located at 5915 Mallory Rd., College Park, Georgia. As of today, records maintained by the Fulton County Courthouse, Office of Records and Deeds supports the Brown's allegation that the lien has not been removed. The lien is recorded in book 29398, page 617. It as also the Mason's belief that this home improvement loan was a FHA Title One loan.

Your institution has forgiven the loan represented by this lien and erased the trade lines on the Brown's credit reports. In an effort to resolve the problems associated with this transaction the final action required is the release of the lien. Please take immediate action necessary to remove the lien. Notify this office in writing and provide supporting documentation that the lien has been removed no later than five (5) days from the receipt of this correspondence.

Your assistance in bringing this matter to an amiable close is greatly appreciated. If you have any questions, please feel free to contact Marion A. Johnson at 1-888-696-4687 ext. 2037.

Sincerely,

Verlon E. Shannon
Director
Quality Assurance Division

Enclosure

Your Right to Cancel

"Exh A"

You are entering into a transaction that will result in a security interest in your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

(1) the date of the transaction, which is _____; or
(2) the date you received your Truth in Lending disclosures; or
(3) the date you received this notice of your right to cancel.

If you cancel the transaction, the security interest is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the security interest in your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at

PREMIERE DESIGNS INC 1755 YOUNG COURT NORCROSS GA 30093
(Creditor's name and business address)

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of _____ (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Jeanne F. Brown — 7/12/00
Buyer's/Consumer's Signature — Date

Acknowledgment of Receipt of Forms

Each of the undersigned acknowledges receipt of two copies each of this Notice.

Jeanne F. Brown — 7/12/00
Buyer's Signature JEANNE F. BROWN — Date

Buyer's Signature — Date

Truth-in-Lending
Rescission Form

Business Systems, Inc., St. Cloud, MN Form CCRC-6 3/2000